

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DAVID SCOTT KOVEN SR., and  
ROXANNE DIANE KOVEN,**

**Plaintiffs,**

**V.**

**TODD HAMMOND, Plattsmouth  
Police Officer, LEROY LEWIS,  
Plattsmouth Police Officer, DAVID  
MURDOCH, Plattsmouth Police  
Chief, ROBERT SORENSON,  
Plattsmouth Police Officer, ANDREW  
KENAN, Plattsmouth Police  
Detective, and DAVID WALKER,  
Plattsmouth Police Detective,**

**Defendants.**

**8:10CV373**

**ORDER**

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This matter is before the Court on Plaintiffs' Motion to Reinstate Missed Deadline of Expert Witnesses ([filing 90](#)) and Plaintiffs' Motion to Extend and Modify the Scheduling Order ([filing 91](#)). These motions will be denied.

**BACKGROUND**

Plaintiffs' deadline for serving opposing parties with expert witness statements was March 29, 2013. ([Filing 53](#).) Having missed this deadline, Plaintiffs' former counsel, William O'Brien, requested leave to serve the expert witness statements out of time. ([Filing 58](#).) In support of the motion, Mr. O'Brien explained that he had mis-calendared the deadline. (*Id.*) On May 31, 2013, the Court denied Plaintiffs' motion to extend. ([Filing 61](#).) Plaintiffs subsequently terminated Mr. O'Brien and Mr. O'Brien was granted leave to withdraw on June 10, 2013. ([Filing 63](#).)

On June 25, 2013, attorney Diana Vogt entered an appearance on behalf of Plaintiffs. ([Filing 66](#).) Ms. Vogt was granted leave to withdraw on July 12, 2013. ([Filing 84](#).)

Plaintiffs are now proceeding *pro se*.

### **DISCUSSION**

Plaintiffs argue that the expired expert witness deadline and other up-coming case progression deadlines, including the November 5, 2013 trial date, should be reset due to the alleged negligence of their former counsel, Mr. O'Brien, and Plaintiffs' inability to locate new counsel at this late-stage of the litigation.

Having considered the totality of the circumstances, the Court will deny Plaintiffs' motions. This action has been pending since October, 2010. Further delay of this case would unduly prejudice Defendants, causing them to expend additional time and resources. Plaintiffs admittedly sensed problems with Mr. O'Brien's representation in January, 2013, yet they did not terminate him until June, 2013. Defendants should not be penalized for Plaintiffs' failure to act promptly in response to alleged difficulties with their former counsel.

Accordingly,

**IT IS ORDERED** that Plaintiffs' Motion to Reinstate Missed Deadline of Expert Witnesses ([filing 90](#)) and Plaintiffs' Motion to Extend and Modify the Scheduling Order ([filing 91](#)) are denied.

**DATED August 6, 2013.**

**BY THE COURT:**

**S/ F.A. Gossett  
United States Magistrate Judge**